



DEPARTMENT OF
FINANCE

ARNOLD SCHWARZENEGGER, GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

February 9, 2004

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**COMMISSION ON
STATE MANDATES**

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

The Department of Finance has reviewed the Commission on State Mandates' Test Claim No. 02-TC-42, Developer Fees, submitted by the Clovis Unified School District. The Claimant cites statutes in seven chapters of the Education Code and the Government Code as the basis of the test claim. The test claim alleges State-mandated costs for school districts to establish and implement policies and procedures to comply with the collection of developer fees. As explained below, we find that a school district's participation in the collection of developer fees is a discretionary action on the part of the school. We find nothing in the Claimant's cited statutes or applicable regulations that makes the collection of developer fees a compulsory activity. Instead, we note that two statutes—Education Code Section 17620 and Government Code Section 65971—merely authorize school districts to levy developer fees. Moreover, the majority of the remaining cited statutes pertain to "downstream" activities that would only apply if a school district chooses to collect developer fees. Consequently, we conclude that a school district's compliance with the requirements for the collection of developer fees does not create a State-mandated reimbursable activity.

Development Fees, Charges, and Dedications (Chapter 6, Part 10.5 of the Education Code, School Facilities)—The Claimant cites Education Code Sections 17620 et al. as a partial basis for the test claim. We note that Education Code Section 17620(a)(1), in part, states that "The governing board of any school district is authorized to levy a fee, charge, dedication, or other requirement against any construction within the boundaries of the district, for the purpose of funding the construction or reconstruction of school facilities ..." (Underlining added.) By stating that a governing board is "authorized" to levy a fee, charge, etc., the statute is merely making the action permissive—not compulsory. Thus, a school district has the discretion whether to levy a fee, charge, etc. in accordance with the statute, thereby making it a voluntary program. As such, notwithstanding the requirements of other provisions of the chapter, we note that when a school district elects to participate in a voluntary program, the "downstream" activities of the district do not constitute a State-mandated reimbursable program. In *Department of Finance v. Commission On State Mandates* (2003) 30 Cal. 4th 727, the California Supreme Court confirmed the merits of the argument that where a local government entity voluntarily participates in a statutory program, the State may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for increased level of activity.

School Facilities (Chapter 4.7, Title 7 of the Government Code, Planning and Land Use)—

The Claimant cites Government Code Sections 65970 et al. as a partial basis for the test claim. Government Code Section 65971(a) states "The governing board of a school district which operates an elementary or high school shall notify the city council or board of supervisors of the city or county within which the school district is located if the governing body makes both of the following findings supported by clear and convincing evidence: (1) That conditions of overcrowding exist in one or more attendance areas within the district which will impair the normal functioning of educational programs including the reason for the existence of those conditions. (2) That all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing those conditions exist." (Underlining added.) By including the wording, "if the governing body makes," the statute gives the governing body discretion in the action that it may take.

Also, Government Code Section 65974(a) reads "For the purpose of establishing an interim method of providing classroom facilities where overcrowded conditions exist, as determined necessary pursuant to Section 65971, and notwithstanding Section 66478, a city ... may, by ordinance, require the dedication of land, the payment of fees, in lieu thereof, or a combination of both, for classroom and related facilities for elementary or high schools as a condition to the approval of a residential development, if all of the following occur: ..." Further, Government Code Section 65981 reads "If an ordinance has been adopted pursuant to Section 65974 which provides for the school district governing body to recommend the fees for providing interim facilities that are to be assessed on a development as a condition of city or county approval of a subdivision, such recommendation shall be required to be submitted to the respective city or county within 60 days following the issuance of the initial permit for development. Failure to provide the recommendation of fees to be assessed within the 60-day period shall constitute a waiver by the governing body of the school district of its authority to request fees pursuant to this chapter." (Underlining added.)

It is clear from the above-cited statutes that a school district has the choice whether to recommend that a fee be levied on development in accordance with provision of this chapter. Given this discretion, school district participation in the developer fee program is voluntary. As such, notwithstanding the requirements of other provisions of the chapter, we note that when a school district elects to participate in a voluntary program, the "downstream" activities of the district do not constitute a State-mandated reimbursable program. Again, consistent with the *Department of Finance v. Commission On State Mandates* (2003) 30 Cal. 4th 727, where a local government entity voluntarily participates in a statutory program, the State may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for increased level of activity.

Payment of Fees, Charges, Dedications, or Other Requirements Against a Development Project (Chapter 4.9, Title 7 of the Government Code, Planning and Land Use)—

The Claimant cites Government Code Sections 65995 et al. as a partial basis for the test claim. We found that this chapter primarily applies to fees, charges, dedications or other requirements against a development project as authorized in Education Code Section 17620 or pursuant to Chapter 4.7 (commencing with Section 65970) of the Government Code. To the extent fees, charges, etc. are authorized, the chapter prescribes certain provisions that would apply, including fee levels; contract requirements between a school district, and a city or county; the use of the fees and charges; school facilities needs analysis; conditions of approval of development projects; adequacy of school facilities; mitigation of environmental effects; and other applicable provisions of law.

proceedings, selection of a mediator, other considerations, failure to select a mediator, adoption of rules, forms and standards; and other provisions relating to the mediation of fees, charges, and other requirements imposed on a development project. Because Section 66031(a)(5) makes these requirement subject to any fees determined pursuant to Chapter 5 (commencing with Section 66000), we conclude that the mediation and dispute resolution activities of this chapter are downstream activities of a district participating in a voluntary program and do not constitute a State-mandated reimbursable cost.

Administrative Costs—Finally, we note that Education Code Section 17620(a)(5) provides that “Fees or other consideration collected pursuant to this section may be expended by a school district for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code, or in preparing the school facilities needs analysis described in Section 65995.6 of the Government Code. In addition, an amount not to exceed, in any fiscal year, 3 percent of the fees collected in that fiscal year pursuant to this section may be retained by the school district, city, or county, as appropriate, for reimbursement of the administrative costs incurred by that entity in collecting the fees. When any city or county is entitled, under an agreement as described in paragraph (4), to compensation in excess of that amount, the payment of that excess compensation shall be made from other revenue sources available to the school district. For purposes of this paragraph, “fees collected in that fiscal year pursuant to this section” does not include any amount in addition to the amounts specified in paragraphs (1) and (2) of subdivision (b) of Section 65995 of the Government Code.” (Underlining added.)

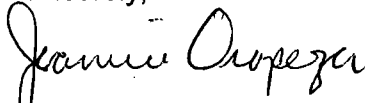
As indicated in subsection (a)(5), the statute already provides for the payment of costs incurred by a school district when it elects to participate in a voluntary developer fee program pursuant to Education Code Section 17620 or Chapters 4.7 and 4.9 of Title 7 of the Government Code . Therefore, this test claim should be denied.

Based on the aforementioned reasons, we conclude that the cited State laws do not create an unfunded State-mandated reimbursable program or cost; therefore the test claim should be denied.

As required by the Commission’s regulations, we are including a “Proof of Service” indicating that the parties included on the mailing list which accompanied your July 10, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Walt Schaff, Principal Program Budget Analyst at (916) 445-0328, or Keith Gmeinder, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF WALT SCHAFF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-42

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the various statutes sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

February 9, 2004
at Sacramento, CA

Walt Schaff
Walt Schaff

PROOF OF SERVICE

Test Claim Name: Developer Fees
Test Claim Number: CSM-02-TC-42

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On February 9, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

E-08

Department of Education
Attention: Gerald Shelton
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

A-17

Office of Public School Construction
Attention: Luisa M. Park
1130 K Street, Suite 400
Sacramento, CA 95814

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

Clovis Unified School District
Attention: Bill McGuire
1450 Herndon
Clovis, CA 93611-0599

Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

Centration, Inc.
Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

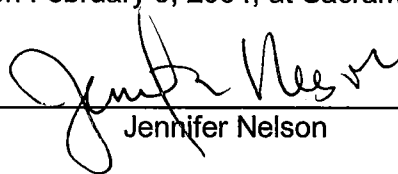
Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

Mandated Cost Systems, Inc.
Attention: Steve Smith
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Blvd., Suite 307
Sacramento, CA 95842

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 9, 2004, at Sacramento, California.



Jennifer Nelson